HIGH COURT OF UTTARAKHAND AT NAINITAL

(Court's order whether case is or not approved for reporting)
(Chapter VIII Rule 32 (2)(b)

Description of the case

Writ Petition No. 432 (S/S) 2005

Smt. Bondi Devi .. Petitioner

Vs.

State of Uttarakhand
And 3 others.

.....Respondents

Approved for reporting.

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Not approved for reporting.

Date of Decision 16th November, 2007.

Initial of Judge.

_____16.11.07

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IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Judgment Reserved

Writ Petition No. 432(S/S)2005

Smt. Bondi Devi W/o late Bankey Lal,
Resident of village-Padli, P.O. Gopeshwar,
District Chamoli. ---Petitioner.

Vs.

1. State of Uttarakhand through Secretary,
   Civil Secretarial, Subhash Road, Dehradun,
2. The Commissioner, Garhwal Mandal,
   Pauri (Uttarakhand),
3. The District Magistrate Chamoli (Uttarakhand),
4. The Sub Divisional Magistrate,
   Joshimath, Chamoli (Uttarakhand). -----Respondents.

Sri Lalit Kumar, learned counsel for the petitioner.
Sri Subhash Upadhyay, learned Standing Counsel for the State/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Lalit Kumar, learned counsel for the petitioner and Sri Subhash Upadhyay, learned Standing Counsel for the State/ respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

i. To quash the order of dismissal from service dated 25.05.1988 passed by respondent no. 4, against late Bankey Lal, declaring the same to be illegal and unconstitutional,

ii. To declare that late Banke Lal would be deemed to have continued in service till 22.08.199 with

all consequential benefits, which will now be paid to be petitioner, being his widow and next of kin,

iii. To award 18% interest on the sum that would become due and payable to the petitioner in consequence of the relief prayed for in the preceding paragraph,

iv. To declare the death of late Bankey Lal on 22.08.1999, as the 'death i harness',

v. To direct the respondent to give employment to the petitioner in a class IV post under the provisions of the above Dying in Harness Rules 1974,

vi. To award the cost of this petition. And

vii. To grant any other relief which this Hon'ble Court may consider just, proper and equitable on the facts and circumstances of the case.

The facts, as emerge out from the petition, are that on 04.03.1974, petitioner's husband late Bankel Lal was appointed on the post of Mirdha (Peon) by the District Magistrate, Chamoli. By an order dated 29.11.1977, the District Magistrate, Chamoli, confirmed late Bankey Lal on the above post of Mirdha with effect from 16.06.1974. That on 19th April 1988, the Sub Divisional Magistrate, Joshmath served charge sheet upon husband of the petitioner containing three charges alleging his illegal absence on three different occasions and asking him to submit his explanation within 15 days from the date of receipt of the said charge sheet. Late Bankey Lal, on 02.05.1988 submitted his reply to the above charge denying the same by stating that during the relevant period he was admitted to Doon Hospital at Dehradun

due to his serious sickness, the information of which he had already sent to the concerned authorities. It is further submitted that the Sub Divisional Magistrate, Joshimath, without holding any enquiry, by his order dated 25th May 1988, terminated the services of Bankey Lal with the direction that no salary would be paid to him for the period of his alleged illegal absence. Sri Bankey Lal moved representation before the District Magistrate, Chamoli against illegal termination order, which was rejected on 25.05.1988. By an order dated 16th August 1990, the Commissioner Garhwal Division rejected the representation/appeal/ revision of late Sri Bankey Lal. On 22.08.1999, Sri Bankey Lal died from the disease 'Pain Abdomen'. After the death of her husband, the petitioner continued pursuing the grievances of her husband's illegal dismissal with no result.

The petitioner has challenged the order of Sub Divisional Magistrate, Joshimath, the order of District Magistrate, Chamoli and that of the order of Commissioner, Garhwal Division on the following grounds:-

(i) Because late Bankey Lal had been appointed by the District Magistrate, Chamoli and therefore his termination from the service by S.D.M., Joshimath who was a subordinate authority to the appointing authority was violate of Article 311(1) of the Constitution of India and hence illegal and unconstituti0nal.

(ii) Because late Bankey Lal had been dismissed from service without holding any enquiry against him which was violate of Article 311

(2) of the Constitution of India and hence the said order was illegal and unconstitutional on this court also.

The respondents have filed a counter affidavit. In the counter affidavit, it is admitted that the petitioner was appointed on the post of Mirdha (Peon) by the District Magistrate, Chamoli on 04.03.1974 and vide order dated 29.11.1977, the services of the husband of the petitioner were made permanent. Late husband of the petitioner in the year 1987, while he was posted was Peon to Patwari Malari, Tehsil Joshimath, was assigned the recovery work for some days relating to land revenue and Gharat Lagan, independently, and he collected some money from the defaulters, but did not deposit the sum in Tehsil and remained absent from his duties without informing his superior. When the matter was examined, he deposited the said amount in the Tehsil and explained that due to illness, he could not deposit the same within time. From 01.08.1987, petitioner's husband again remained absent from his duties without any information to his superiors; consequently, the Supervisor Kanoongo concerned informed the Tehsildar, Joshimath regarding his absence. When the Tehsildar, Joshimath vide letter dated 18.12.1987 sought explanation from the petitioner's husband for his absence from duties, though the notice was served upon him, but he did not submit any explanation therefore, the Tehsildar, Joshimath referred the matter to the Sub Divisional Magistrate, Joshimath for taking necessary action against the petitioner's husband. On 2nd March, 1988, the Sub Divisional Magistrate, sent the matter to the District Magistrate,

Chamoli to initiate disciplinary proceedings against the petitioner's husband, however, the District Magistrate Chamoli vide order dated 15th March 1988 sent the matter back to the S.D.M. stating that as the State Govt. has given power of appointing as well as for awarding punishment to the Class IV employees to the Sub Divisional Magistrate vide Govt. Order dated 12.01.1976, the Sub Divisional Magistrate is competent to deal with the matter. Consequently, the Sub Divisional Magistrate framed charges against the petitioner's husband and the charge sheet was served upon the petitioner's husband on 03.05.1988, however the delinquent did not file explanation to the charges levelled against him. Therefore, the Sub Divisional Magistrate, Joshimath passed final order on 25.05.1988 terminating the services of petitioner's husband.

Aggrieved with the order dated 25.05.1988, the petitioner's husband filed a representation before the District Magistrate which was rejected. Thereafter, late Bankey Lal filed appeal before the Commissioner, who after examining the matter, vide its order dated 16.08.1990 dismissed the appeal. The review application filed before the Commissioner, which too was dismissed by the Commissioner on 15.11.1991. The order of dismissal of appeal and the order passed in the review application by the Commissioner were not challenged by the petitioner, as such the said orders have touched its finality and the petitioner is not competent to challenge these orders as the husband of the petitioner died on 22.08.1999 and the petitioner has filed this writ petition on 19.04.2005.

After rejection of the review application, the petitioner had requested the Department for payment of balance dues, which have already been paid to the petitioner. Thus, the respondents have taken stand firstly; that the Sub Divisional Magistrate is the Competent Authority to terminate the services of the husband of the petitioner and secondly; since no explanation was given by the husband of the petitioner against the charges levelled against him, the Sub Divisional Magistrate was correct in passing the final order of termination of the services of the delinquent.

From the facts as narrated in the writ petition and in the counter affidavit there arise two questions, first whether the Sub Divisional Magistrate, who is not the Appointing Authority of the petitioner's husband, is Competent to terminate the services of the petitioner's husband? And second, whether an inquiry was conducted against the husband of the petitioner before passing the impugned order?

So far the second questi0n is concerned, it is stated by the respondents that the chargesheet was served upon the delinquent but he did not submit any explanation to the charges levelled against him. In these circumstances, the Sub Divisional Magistrate had left no option but to except the charges levelled against the delinquent, thus it cannot be said that no inquiry was conducted. The petitioner's husband had not taken interest in the departmental inquiry and did not file his explanation. There is no complaint on behalf of the petitioner that the Inquiry Officer in holding the inquiry has committed any

irregularity. The order impugned itself says that the charge sheet was served upon the delinquent on 03.05.1988 and he was required to submit his explanation within 15 days i.e. by 18 May 1988 and since he could not submit any explanation till 25th May 1988, the Sub Divisional Magistrate passed order of termination of the petitioner. Though in the writ petition, annexure no. 7 is the reply of the charge sheet submitted by the petitioner's husband against the charges levelled against him, but from perusal of this reply it appears that the same has been submitted on 2nd May 1988. When the delinquent received the charge sheet on 3rd May 1988, as is evident from the order impugned order, there was no occasion for the delinquent to submit its reply on 2nd May 1988 prior to receiving of the charge sheet. Thus submission of the learned counsel for the petitioner on this point is after thought and is not sustainable.

So far the first question is concerned, the respondents have admitted that the Sub Divisional Magistrate was having power to terminate the services of the husband of the petitioner being the Appointing Authority, as per Govt. Order dated 12th January 1976 and he was the Appointing Authority of the petitioner. But this Court is not convinced with the arguments advanced by the learned Standing Counsel. Firstly, the Govt. Order cannot override the Rules. The petitioner has submitted that the Appointing Authority of the petitioner's husband is the District Magistrate, which is clear from the appointment order as also from the confirmation order passed by the District Magistrate. It is also not disputed by the respondents that the District Magistrate is the

Appointing Authority of husband of the petitioner, who has confirmed him on the post of Mirdha (Peon).

Learned counsel for the petitioner has further submitted that as per the Rules, the District Magistrate is the Appointing Authority. The respondents could not show any Rule that the Sub Divisional Magistrate is the Appointing Authority of Class IV employees.

The respondents have relied upon the Govt. Order dated 12th January 1976 and have submitted that vide this order, the Sub Divisional Magistrate has been empowered to terminate the services of the petitioner's husband. But in my opinion firstly, the Govt. Order cannot override the Rules and secondly, the said Govt. Order, which is also annexed by the respondents alongwith their counter affidavit, does not say that the Sub Divisional Magistrate is the Appointing Authority of the petitioner's husband. The relevant extract of the aforesaid Govt. Order is reproduced hereunder:-

'' विषयः– जिला एवं तहसील स्तर पर राजस्व प्रशासन का विकेन्द्रीकरण एवं अधिकारों का प्रतिनिधायन।

मुझे यह कहने का निर्देश हुआ है कि जिला प्रशासन को सुदृढ़ सशक्त एवं प्रभावी बनाने तथा प्रशासनिक कार्यो में तीव्र गति लाने के उद्देश्य से जिला प्रशासन के विकेन्द्रीकरण तथा प्रशासनिक कार्यो के प्रतिनिधायन का विशेष समय से शासन के विचाराधीन था।

इस विषय पर विचारोपरांत शासन द्वारा कुछ महत्पूर्ण निर्णय लिये गये है। इन निर्णयो के कार्यान्वयन के लिए राज्यपाल महोदय राजस्व विभाग के अंतर्गत विभिन्न स्तर के अधिकारियों को निम्नलिखित अधिकार प्रतिनिहित किये जाने की स्वीकृति प्रदान करते है।

अधिकरो का पदनामः– प्रतिनिहित अधिकारी

1. अपने सब डिवीजन के अंर्तगत कार्यरतः–

1. संग्रह अमीनो जिनमे सीजनल अमीन भी सम्मिलित है की नियुक्ति करना तथा उन्हे दण्ड देना।
2. रजिस्ट्रार कानून गो, सुपरवाईजर कानून गो, सहायक रजिस्ट्रार कानून गो तथा तृतीय श्रेणी के समस्त कर्मचारियो को स्थांनातरित करना।
3. रजिस्ट्रार कानून गो, सुपरवाईजर कानून गो, सहायक रजिस्ट्रार कानून गो तथा तृतीय श्रेणी के समस्त कर्मचारियो जिनको नियुक्ति के लिए कलैक्टर प्रधिकृत अधिकारी है, को लघु दण्ड दे सकते है।
4. उन तृतीय श्रेणी अधिकारीयों को जिनके नियुक्ति अधिकारी कलैक्टर है, 30 दिन तक का उपार्जित अवकाश स्वीकृत तथा नायब तहसीलदारों को 7 दिन से अधिक आकस्मिक अवकाश स्वीकृत करना।''

Learned Standing Counsel has submitted that since the order rejecting the appeal of petitioner's husband as well as the order passed on the review application were not challenged by the petitioner's husband during his lifetime, the petitioner now cannot challenge the same by filing writ petition, after elapse of so many years and specifically when she had already got the balance dues of her late husband.

The review application was rejected by the Commissioner on 15.11.1991, the petitioner's husband died on 22.08.1999 and the writ petition has been filed on 19th April 2005. No reasonable explanation has been given by the petitioner as to why the order rejecting the review application dated 15.11.1991 was not challenged in the Court by the husband of the petitioner himself till his death which occurred on 22.08.1999 and again under

which circumstance the petitioner was not able to approach the Court for 6 years, even after the death of her husband.

Third submission of the learned Standing Counsel that the husband of petitioner expired on 22.08.1988, his services were terminated on 22.05.1988, the appeal was dismissed by the Commissioner on 16.08.1990 and the review application was rejected on 15.11.1991. The petitioner's husband was expired on 22.08.1999 and the State of Uttarakhand came into existence on 9th November 2000. In these circumstances, in case any positive order is to be passed that will be executed by the State of U.P. and not by the State of Uttarakhand and since the petitioner has not impleaded the State of U.P. as party respondent, no order can be passed against that respondent who has not been impleaded in the writ petition. I am fully in agreement with the arguments advanced by the learned Standing Counsel on the point.

The petitioner is not entitled to get any relief for the reasons that the petitioner's late husband did not challenge the order dated 16.08.1990 during his lifetime, as he expired after 8 years i.e. on 22.08.1999 and further the petitioner too did not approach this Court within time as the writ petition has been filed on 19.04.2005. No reasonable explanation has been given by the petitioner for the aforesaid delay of 14 years. Without submitting reasonable explanation for such a long delay it will not be proper to pass any positive order in the facts and circumstances of the present case. Further, since the State

of U.P. is not a party to the writ petition, the writ petition deserves to be dismissed.

In view of the forgoing observations, the writ petition is dismissed. No order as to costs.

(M.M. Ghildiyal, J.)

November 16, 2007:
NCM: